On August 28, 2005, Hurricane Katrina devastated the city of New Orleans, killing nearly 2,000 people and displacing approximately 1,000,000 residents. During the hurricane, decisions regarding priority of care had to be made by first responders and health care personnel.

In one highly publicized case, medical personnel at Memorial Medical Center in New Orleans had to make life and death decisions about which of their patients would receive the limited medical supplies and resources to save their lives. One doctor and two nurses were even brought up on second degree murder charges for decisions they made there.

A grand jury ultimately declined to indict these medical personnel, but this case raises questions regarding the appropriate standard by which emergency responders and health care providers should be judged and what legal protections are available to volunteer first responders in emergencies.
**New York State’s Good Samaritan Law**

Under New York’s Public Health Law, “any person who voluntarily and without expectation of monetary compensation renders emergency treatment to an individual at the scene of an accident or other emergency situation outside of a hospital” or other medical setting, “shall not be liable for damages for any injuries” or death as a result of the emergency treatment rendered unless it is established that the injuries or death were due to gross negligence on the part of the volunteer.\(^\text{ii}\)

The Good Samaritan Law does not create an affirmative duty for a volunteer to respond to an emergency. However, when a volunteer does respond to an emergency, his or her actions are judged by the higher “gross negligence” standard, rather than the ordinary preponderance of the evidence standard typically applied in civil actions.

In determining whether New York’s Good Samaritan Law applies to a first responder, the courts look to the unique facts of the case to determine if the responder was a volunteer with no affirmative legal duty to respond to the emergency situation.

To illustrate, in one case, *Rodriguez v. New York City Health and Hospital Corp.*, an off-duty doctor was returning home to his apartment. As he was climbing the stairs, he was stopped by another tenant in the building. She asked the doctor to look at her husband who was not feeling well. The doctor examined her husband, determined that he was very sick, called 911 for an ambulance, and then left. An ambulance did take the patient to the hospital, but he did not survive. The decedent’s estate then sued the doctor for malpractice.

The court held that since the doctor had voluntarily treated the husband in an emergency situation, the Good Samaritan Law applied. There was no legal basis to impose liability on the doctor, since his actions did not rise to the level of gross negligence and the court dismissed the estate’s complaint.\(^\text{iii}\)

If the doctor had chosen to ignore the wife’s plea for help, he still would not have been liable for any damages because he had no affirmative duty to provide medical assistance under the circumstances.

Contrast this case to the situation where a patient comes into a doctor’s office seeking emergency treatment and dies. The Good Samaritan Law will not apply because the treatment was rendered in a doctor’s office. Therefore, the applicable standard would be the preponderance standard, not the higher gross negligence standard.\(^\text{iv}\)

**Federal Good Samaritan Laws**

The federal government has also enacted legislation to protect emergency medical responders in crises like terrorist attacks and natural disasters. However, the measures taken by the federal government to limit liability in crises provide protection only in narrowly defined circumstances, with piecemeal measures that leave individual medical personnel puzzling over whether to volunteer their services.

One statute that provides protection to emergency responders, including medical responders, is the Emergency Management Assistance Compact (“EMAC”). EMAC has the principle function of facilitating the exchange of resources and personnel between states in times of emergency.\(^\text{v}\) EMAC was ratified by Congress in 1996.\(^\text{vi}\) Since that time, all fifty states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands have enacted legislation to join EMAC.\(^\text{vii}\)
The purpose of EMAC is to create a “mutual assistance between states... in managing any emergency or disaster that is duly declared by the governor of the affected state(s)”  

EMAC goes a long way to facilitate the provision of resources and personnel between states, and it has been noted that emergency medical technicians, ambulances, medical doctors, and registered nurses are among the most commonly requested resources in an emergency. However, the limitation of liability established by EMAC applies only to a narrow subset of medical personnel who provide care during emergencies.

At the outset, EMAC is triggered only when the governor of the affected state officially declares an emergency. Most limiting, however, is that EMAC only shields emergency medical responders from liability if they are officially deployed to provide medical services under EMAC.

EMAC provides that, “[o]fficers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the Requesting State for tort liability and immunity purposes.” EMAC further provides that those rendering aid under EMAC shall not be liable on account of any act or omission taken in good faith. However, persons rendering aid under EMAC are not shielded from liability for any acts or omissions constituting “willful misconduct, gross negligence, or recklessness.”

EMAC leaves many emergency medical responders exposed to liability for care rendered in emergency situations. Indeed, in its investigation of the general preparation and response to Hurricane Katrina, Congress recognized that “self-deployed personnel,” or emergency medical responders who act without official deployment, do so “without proper authority, without liability protection, and without eligibility for expense reimbursement.” EMAC provides no protection to those operating outside of its auspices.

The federal Volunteer Protection Act (“VPA”) was passed one year after EMAC, in 1997, and, like EMAC, applies to all responders, not just medical professionals. The House Report on the VPA states that Congress was motivated to enact this legislation, in part, by its finding that the “willingness of volunteers to offer their services is deterred by the potential for liability actions against them.”

While more volunteers are protected from liability under the VPA than EMAC, the VPA provides protection from liability for only a specifically defined sub-category of responders. Under the VPA, “no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity” as long as four conditions are met:

1. The volunteer must have been “acting within the scope of the volunteer’s responsibilities in the nonprofit organization or governmental entity at the time of the act or omission”;
2. The volunteer also needs to have the proper licensure, certification, or authority to practice in the state where he or she provides services;
3. The volunteer may not have partaken in “willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer”;
4. The harm may not have been caused by the volunteer’s operation of a “motor vehicle, vessel, aircraft, or other vehicle.”
Punitive damages are recoverable in cases with claims involving egregious conduct.\textsuperscript{xxiii}

The VPA provides meaningful protection to “Good Samaritans” who offer medical services in emergencies, insofar as it encourages physicians and medical providers to join nonprofits or government entities, through which their services can be utilized in a concerted and organized effort. It also provides protection from liability so long as the claim does not involve damages arising out of grossly negligent or egregious conduct.

Importantly, however, those who volunteer medical services upon their own accord, and not through a non-governmental organization or government entity, are not shielded from liability for negligence under the VPA.

**Model Legislation for State Good Samaritan Laws**

Certain medical practitioners are also provided protection from liability where a state has enacted the Uniform Emergency Volunteer Health Practitioners Act (“UEVHPA”),\textsuperscript{xiv} the model legislation recommended by the National Conference of Commissioners on Uniform State Laws.\textsuperscript{xxv} In response to Hurricane Katrina and concerns regarding the ability to respond to public health crises, the National Conference of Commissioners on Uniform State Laws prepared and approved the UEVHPA in 2007.\textsuperscript{xxvi} To date, the UEVHPA has been enacted by fourteen states, the District of Columbia, and the Virgin Islands.\textsuperscript{xxvii}

The UEVHPA applies to registered volunteer health practitioners who provide health or veterinary services for a host entity while a declaration of emergency is in effect.\textsuperscript{xxviii} To register under the UEVHPA, practitioners must apply to a registration system that meets certain criteria.\textsuperscript{xxix} Properly registered volunteer health practitioners are then shielded from most liability for any act or omission in providing health or veterinary services.\textsuperscript{xxx}

Under UEVHPA, volunteer health practitioners can only be held liable for damages if their act or omission constitutes an intentional tort or willful, wanton, grossly negligent, reckless, or criminal misconduct.\textsuperscript{xiii}

**Conclusion**

The New York Good Samaritan Law is clear that doctors who render volunteer medical assistance in public health crises outside of a medical office are held to the higher gross negligence standard. However, good samaritans who render volunteer assistance outside of New York State, such as the doctor and two nurses who treated patients at Memorial Medical Center during Hurricane Katrina, must remain vigilant of the federal and state regulations governing their care, particularly when providing medical assistance on their own accord, and not through a governmental or non-governmental agency. Whether a good samaritan will be protected from liability to the same extent as in New York State will hinge upon the applicable legislation of that particular state.

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